COMMENTS

The enclosed is responsive to the Examiner's Office Action mailed on March 26, 2004. At the time Examiner mailed the Office Action claims 1-84 were pending. By way of the present response, the Applicants have: 1) added claims 85-88; 2) amended claims 1, 6, 33, 37, 39 and 71; and 3) cancelled no claims. As such, claims 1-88 are now pending. Applicants respectfully request reconsideration of the present application and the allowance of all claims.

Examiner stated that errors to page 23, lines 16-19 of the specification were present and suggested corrections. Applicants thank Examiner and have made the suggested corrections.

The Examiner rejected claims 1-13, 15-19, 21-26, 28-31, 33-41, 43-52, 54-58, 60-65, 67-77, 79, 83 and 84 under 35 U.S.C. 102(e) as being anticipated by U.S. Application No. 09/863,593, Pruthi, et al. (hereinafter "Pruthi").

The Applicant has amended Claim 1 to better state the meaning and function of monitoring performance at a demarcation point. The amendment does not add new matter; it only clarifies the existing meaning. Specifically, Claim 1 has been amended to include the collection of data indicative of a first network condition between a first host on a first side and the demarcation point and a second network condition between a second host on a second side and the demarcation point. In regards to independent claim 1, the Examiner states the phrase "determining a location of a performance problem associated with the network application identified as a result of monitoring performance, the location being with

respect to the demarcation point" is met by Pruthi. Pg. 3, paragraph 1 of the office action mailed 3/26/04. Applicants respectfully submit that Claim 1 as amended teaches that the location of the performance problem is with respect to the demarcation point. On the other hand, Pruthi discloses that a network monitor determines the location of performance problems, but it does not disclose that the location of the problem is with respect to the demarcation point (see page 6, paragraph 67) by collecting data indicative of a network condition on a first side of the demarcation point and a second side of the demarcation point. The network monitor 102 of Pruthi is merely a probe along traffic flow. It is not a demarcation point, and does not measure network conditions on either side of it. For example Pruthi states, "[t]he stored records may be analyzed to determine which server may be troubled. In an exemplary embodiment, remote network monitors each look for FIN packets, using a filter, and upon detecting a FIN packet they send a message including contents of the FIN packet to a central monitor that makes the troubled server determination." This is not the same as making a problem determination with reference to the demarcation point. Claim 1 is not claiming the location of the "troubled server" as disclosed in Pruthi. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claim 1 is not anticipated by Pruthi.

In regards to Claim 6, the Applicant has amended Claim 6 to better state the meaning and function of a demarcation point. The amendment does not add new matter; it only clarifies the existing meaning.

In regards to independent claim 31, the same argument that was discussed above with respect to Claim 1 applies to Claim 31. Furthermore, the Examiner states the phrase "employing at least one service-level agreement between the provider of the network

application and a customer with responsibility for management of performance problems associated with the network application based on the demarcation point." is met by Pruthi. Pruthi discloses a "network application monitoring system" (page 2, para. 14-15). Such a system is used for general purpose troubleshooting and does not imply there must be a service-level agreement. Claim 31 claims the use of a service-level agreement explicitly. Further, Examiner submits that Pruthi does not explicitly state that a service-level agreement exists, but that it may be implied. Applicants disagree. There is nothing in Pruthi that makes it clear that a service-level agreement exists. Implication of such an agreement is insufficient. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claim 31 is not anticipated by Pruthi.

In regards to independent claim 33, the same argument that was discussed above with respect to Claim 1 applies to Claim 33. Furthermore with respect to Claim 33, the Examiner states the phrase, "the provider using the data collected at the demarcation point to determine whether a problem associated with the operation of the network application is a responsibility of the provider" is met by Pruthi. Claim 33 discloses that the provider uses the data collected to determine whether a problem is the responsibility of the provider. Pruthi discloses that a network monitor determines the location of performance problems, but it does not disclose that a provider uses this information to determine if a problem is their responsibility (page 6, para. 67). There is nothing in Pruthi that explicitly or implicitly states that collected data is used by a provider to determine if a problem is their responsibility. For example Pruthi states, "The stored records may be analyzed to determine which server may be troubled." This does not disclose anything about providers using this information. It is only a general

statement about using data. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claim 33 is not anticipated by Pruthi.

The Applicant has also amended Claim 33 to better state the meaning and function of monitoring performance at a demarcation point. The amendment does not add new matter; it only clarifies the existing meaning.

In regards to independent claim 39, the same argument that was discussed above with respect to Claim 1 applies to Claim 39. Also, the Applicant has amended Claim 39 to better state the meaning and function of monitoring performance at a demarcation point. The amendment does not add new matter; it only clarifies the existing meaning. Furthermore with respect to Claim 39, the Examiner states the phrase, "management control coupled to the memory to access the information indicative of the delays occurring in the network and to determine if a problem exists in the network that is a responsibility of a service provider" is met by Pruthi. The Examiner cites to page 3, paragraphs 34-37 of Pruthi as support. Claim 39 discloses a network device that, among other things, comprises a management control that accesses delay information to determine if a problem exists that is the responsibility of a service provider. There is nothing in Pruthi that explicitly or implicitly states that a management control accesses delay information to determine if a problem exists that is the responsibility of a service provider (emphasis added). Pruthi discloses a user interface that can access statistics. But nothing is mentioned about this information relating to access delays, or the information being used to determine issues of responsibility. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claim 39 is not anticipated by Pruthi.

In regards to independent claim 71, the same argument that was discussed above with respect to Claim 1 applies to Claim 71. Also, the Applicant has amended Claim 71 to better state the meaning and function of monitoring performance at a demarcation point. The amendment does not add new matter; it only clarifies the existing meaning. Furthermore with respect to Claim 71, Examiner states the phrase, "management control coupled to the memory to access the information indicative of the delays occurring in the network and to determine if a problem exists in the network that is the responsibility of an application service provider" is met by Pruthi. The Examiner cites to page 3, paragraphs 34-37 of Pruthi as support. Claim 71 discloses an architecture that, among other things, comprises a management control that accesses delay information to determine if a problem exists that is the responsibility of a service provider. There is nothing in Pruthi that explicitly or implicitly states that a management control accesses delay information to determine if a problem exists that is the responsibility of a service provider. Pruthi discloses a user interface that can access statistics. But nothing is mentioned about this information relating to access delays, or the information being used to determine issues of responsibility.

Further, the Examiner states the phrase, "a measurement engine to take measurements at the demarcation point and record information indicative of delays occurring in the network, the measurement engine to generate a measurement value in response to the information regarding delays" is met by Pruthi at page 3, paragraph 33. Pruthi discloses the generation of measurement values in response to information regarding one-way delays. For example, Pruthi states, "Generally the same packet is identified at two separate network monitors and the difference in time between when it was received by each monitor is used to calculate the one-way delay." (pg. 6, para. 71) Claim 71 does not have such a limitation. Claim 71 claims

that the measurement for delays occurs at the demarcation point and does not require the use of multiple network monitors as required by Pruthi. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claim 71 is not anticipated by Pruthi.

In regards to dependent claims 4 and 43, the same arguments for patentability provided with respect to their base claim is applicable to these claims. Furthermore, the Examiner states the phrase, "measuring end-to-end performance of the network application with respect to the network" is met by Pruthi. The Examiner cites page 2, paragraph 33 of Pruthi as support. Paragraph 33 of Pruthi does not disclose how delays are computed. When referring back to paragraph 71, Pruthi computes delays by, "Generally the same packet is identified at two separate network monitors and the difference in time between when it was received by each monitor is used to calculate the one-way delay." This is distinguished from Claims 4 and 43 which set forth using a single demarcation point to compute delays. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claims 4 and 43 is not anticipated by Pruthi.

In regards to dependent claims 5 and 44, the same arguments for patentability provided with respect to their base claim is applicable to these claims. Furthermore, the Examiner states the phrase, "measuring qualitative performance of the network application" is met by Pruthi. The Examiner cites page 2, paragraph 33 of Pruthi as support. Paragraph 33 of Pruthi does not disclose that qualitative performance is measured in reference to a demarcation point as claimed in claims 5 and 44. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claims 5 and 44 is not anticipated by Pruthi.

In regards to dependent claims 11 and 50, the same arguments for patentability provided with respect to their base claim is applicable to these claims. Furthermore, the Examiner states the phrase, "comparing congestion index values over time" is met by Pruthi. The Examiner cites page 2, paragraphs 31-33 and pg. 5, paragraph 53 of Pruthi as support. This is not the same. The congestion index of claims 11 and 50 are computed from both sides of the demarcation point. Pruthi discloses one-way delay numbers that measure traffic in both directions, but over the same segment of the network and not in reference to a single demarcation point. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claims 11 and 50 is not anticipated by Pruthi.

In regards to dependent claims 7 and 70, the same arguments for patentability provided with respect to their base claim is applicable to these claims. Furthermore, the Examiner states that a shaping block is met by Pruthi. The Examiner cites page 5, paragraph 53 of Pruthi as support. Pruthi disclose the dynamic routing of communications. This is not the same as shaping traffic. Dynamic routing is the movement of traffic, not the shaping or control of traffic to meet bandwidth requirements. Thus, in view of this, Applicants respectfully submit that the present invention as claimed in Claims 7 and 70 is not anticipated by Pruthi.

In regards to dependent claims 32 and 78, Examiner states that the combined teachings of Pruthi and U.S. Patent No. 6,556,659 Bowman-Amuah, et al. ("Hereinafter "Bowman") render claims 32 and 78 obvious. Claims 32 and 78 teach the recording of measurements and having a service level agreement for just the provider side of the demarcation point. This is not disclosed by the teachings of Pruthi and Bowman. Specifically, the same lack of teaching discussed above with respect to claims 31 and 71

applies to claims 32 and 78. Furthermore, neither Pruthi and Bowman makes reference to the agreement being based on the provider side only. In view of these deficiencies in the teachings of Pruthi and Bowman, the combination of Pruthi and Bowman does not teach all the limitations in the claims. Therefore, the present invention as claimed in Claims 32 and 78 is not obvious in view of Pruthi and Bowman.

In regards to dependent claims 42 and 80, Examiner states that the combined teachings of Pruthi and U.S. Patent No. 6,321,264 Fletcher, et al. (Hereinafter "Fletcher") render claims 42 and 80 obvious. Specifically, the same lack of teaching discussed above with respect to claims 31 and 71 applies to claims 42 and 80. Furthermore, Fletcher discloses, "time-stamps are applied to the request and response data packets at the end-node computer system; that is, time-stamps are applied at the client computer system..." Column 12, lines 24-28. Fletcher further discloses, "time-stamps are applied at the network interface cards (NICs) of client computer system..." (col. 12, lines 44-46) This shows that Fletcher makes measurements by modifying the hardware and/or software on host devices. Claim 42 and 80 do not require such a limitation. In the present invention as claimed, measurements are done solely from the demarcation point. In view of these deficiencies in the teachings of Pruthi and Bowman, the combination of Pruthi and Bowman does not teach all the limitations in the claims. Therefore, the present invention as claimed in Claims 40 and 80 is not obvious in view of Pruthi and Bowman.

In regards to dependent claims 81 and 82, Examiner states that the combined teachings of Pruthi and U.S. Patent No. 6,134,237 Brailean, et al. (Hereinafter "Brailean") render claims 81 and 82 obvious. Specifically, the same lack of teaching discussed above with respect to claim 71 applies to claims 81 and 82. Furthermore, Brailean discloses the

recording of a sequence number of a packet at a network monitor. This is not the same as claims 81 and 82, which sets forth recording a time stamp of each sequence number as they reach a demarcation point. Brailean fails to disclose the recording of a timestamp associated with each sequence number that passes a demarcation point. In view of these deficiencies in the teachings of Pruthi and Brailean, the combination of Pruthi and Brailean does not teach all the limitations in the claims. Therefore, the present invention as claimed in Claims 81 and 82 is not obvious in view of Pruthi and Brailean.

Accordingly, Applicant respectfully submits that the rejections under 35 U.S.C. §102 and §103 have been overcome by the amendments and the remarks and withdrawal of these rejections is respectfully requested. Applicant submits that Claims 1-86 as currently presented are in condition for allowance and such action is earnestly solicited.

Please charge any shortages and credit any overcharges to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 6/21/04

Michael J. Mallie
Reg. No. 36,591

12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1030
(408) 720-8300